

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 05-11803-MLW

SHENIA DANCY-STEWART as
Administratrix of the Estate of
EVELINE BARROS-CEPEDA, MARIA
DaROSA, and LUIS CARVALHO,
Plaintiffs,

v.

THOMAS TAYLOR, Jr., and the CITY
OF BOSTON,
Defendants.

**DEFENDANT CITY OF BOSTON'S MOTION TO DISMISS COUNTS IX, X, XI,
XIV, XV OF PLAINTIFFS' COMPLAINT.**

NOW COMES the Defendant, City of Boston, (the "City") and moves this Honorable Court pursuant to Fed.R.Civ.P. 12(b)(6), to dismiss Counts IX, X, XI, XIV, and XV of the Plaintiffs' Complaint.

As grounds therefore, the Defendant states that:

1. Under 42 U.S.C. Section 1983 municipalities cannot be held liable merely through the theory of respondeat superior;
2. Plaintiffs have not plead that the City of Boston had a policy or custom that caused a constitutional violation;
3. The City is immune from negligence suits under M.G.L. ch. 258, §10(b), because the alleged conduct of City of Boston employees in this case involved discretionary functions;
4. The City of Boston is immune from negligence suits under M.G.L. ch. 258, §10(j), since Plaintiffs' alleged harms were caused by a third person and the

City of Boston did not originally cause the situation which led to Plaintiffs' harms;

5. The City is immune from negligent training and supervision claims pursuant to M.G.L. ch. 258, §10(b) and §10(j).

Respectfully submitted,

DEFENDANT CITY OF BOSTON,

Merita A. Hopkins
Corporation Counsel

By its attorneys:

/S/ Kate Cook
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CERTIFICATE OF SERVICE

I, Kate Cook, hereby certify that on October 21, 2005, I served The Defendant City of Boston's Motion to Dismiss and Accompanying Memorandum of Law in Support Thereof by mailing a copy, postage prepaid, to the following:

Andrew Stockwell-Alpert
11 Beacon Street, Suite 1210
Boston, MA 02108

October 21, 2005
Date

/s/ Kate Cook
Kate Cook

CERTIFICATION PURSUANT TO LOCAL RULE 7.1(A)(2)

I hereby certify that undersigned counsel for the Defendant, City of Boston, discussed the above motion with Andrew Stockwell-Alpert via telephone on October 21, 2005, both in a good faith effort to resolve and narrow the issues presented by said motion, but that counsel were unable to confer or to resolve the issues prior to filing of the motion.

10/21/05
Date

/s/ Kate Cook
Kate Cook